

APPENDIX E

ENDANGERED SPECIES

TITLE 12

CHAPTER 925

FISH AND WILDLIFE MANAGEMENT AND RESEARCH

SUBCHAPTER 3

ENDANGERED SPECIES; MANAGEMENT AND RESEARCH

12 § 12801. Declaration of purpose

The Legislature finds that various species of fish or wildlife have been and are in danger of being rendered extinct within the State of Maine, and that these species are of esthetic, ecological, educational, historical, recreational and scientific value to the people of the State. The Legislature, therefore, declares that it is the policy of the State to conserve, by according such protection as is necessary to maintain and enhance their numbers, all species of fish or wildlife found in the State, as well as the ecosystems upon which they depend.

This subchapter and chapter 631 are established to carry out the purposes of this section.

12 § 12802. Commissioner's authority, investigations and programs

1. Investigations. The commissioner may conduct investigations in order to develop information relating to population size, distribution, habitat needs, limiting factors and other biological and ecological data relating to the status and requirements for survival of any species of fish or wildlife occurring in the State, whether endangered or not.

2. Programs. The commissioner may develop programs to enhance or maintain the populations described in subsection 1.

12 § 12803. Designation of endangered species

1. Standards. The commissioner shall recommend a species to be listed as endangered or threatened whenever the commissioner finds one of the following to exist:

- A. The present or threatened destruction, modification or curtailment of its habitat or range;
- B. Overutilization for commercial, sporting, scientific, educational or other purposes;
- C. Disease or predation;
- D. Inadequacy of existing regulatory mechanisms; or
- E. Other natural or manmade factors affecting its continued existence within the State.

2. Commissioner's duties. In recommending a species to be listed as endangered or threatened, the commissioner shall:

- A. Make use of the best scientific, commercial and other data available;
- B. Consult, as appropriate, with federal agencies, other interested state agencies, other states having a common interest in the species and interested persons and organizations; and

C. Maintain a list of all species that the Legislature has designated to be endangered or threatened, naming each species by both its scientific and common name, if any, and specifying over what portion of its range each species so designated is endangered or threatened.

3. Legislative authority. The Legislature, as sole authority, shall designate a species as state endangered or state threatened species. The list of state endangered or state threatened species is as follows:

- A. Least Tern, *Sterna albifrons*, Endangered;
- B. Golden Eagle, *Aquila chrysaetos*, Endangered
- C. Piping Plover, *Charadrius melodus*, Endangered
- D. Sedge Wren, *Cistothorus platenis*, Endangered
- E. Grasshopper Sparrow, *Ammodramus savannarum*, Endangered
- F. Box Turtle, *Terrapene Carolina*, Endangered
- G. Black Racer, *Coluber constrictor*, Endangered
- H. Roseate Tern, *Sterna dougallii*, Endangered
- I. Northern Bog Lemming, *Synaptomys borealis*, Threatened
- J. Blanding's Turtle, *Emydoidea blandingii*, Endangered
- K. Black Tern, *Chlidonias niger*, Endangered
- L. American Pipit, *Anthus rubescens*, Endangered
- M. Peregrine Falcon, *Falco peregrinus*, Endangered
- N. Flat-headed Mayfly, *Epeorus frisoni*, Endangered
- O. Ringed Boghaunter, *Williamsonia lintneri*, Endangered
- P. Clayton's Copper, *Lycaena dorcas claytoni*, Endangered
- Q. Edwards' Hairstreak, *Satyrium edwardsii*, Endangered
- R. Hessel's Hairstreak, *Mitoura hesseli*, Endangered
- S. Katahdin Arctic, *Oenis Polixenes katahdin*, Endangered
- T. Spotted Turtle, *Clemmys guttata*, Threatened
- U. Bald Eagle, *Haliaeetus leucocephalus*, Threatened
- V. Razorbill, *Alca torda*, Threatened
- W. Atlantic Puffin, *Fratercula arctica*, Threatened
- X. Harlequin Duck, *Histrionicus histrionicus*, Threatened
- Y. Arctic Tern, *Sterna paradisaea*, Threatened
- Z. Upland Sandpiper, *Bartramia longicauda*, Threatened
- AA. Swamp Darter, *Etheostoma fusiforme*, Threatened
- BB. Tidewater Mucket, *Leptodea ochracea*, Threatened
- CC. Yellow Lampmussel, *Lampsiliscariosa*, Threatened
- DD. Tomah Mayfly, *Siphonisca aerodromia*, Threatened
- EE. Pygmy Snaketail, *Ophiogomphus howei*, Threatened
- FF. Twilight Moth, *Lycia rachelae*, Threatened
- GG. Pine Barrens Zanclognatha, *Zanclognatha Martha*, Threatened

4. Process for recommendation; notice and hearings. Prior to recommending an addition, deletion or other change to the endangered and threatened species listed in subsection 3, the commissioner shall provide for public notice and public hearings on that proposed recommendation in accordance with the provisions of Title 5, chapter 375, subchapter 2.

5. Designation by Legislature. The Legislature may not amend the list of endangered or threatened species in subsection 3 except upon the recommendation of the commissioner.

12 § 12804. Conservation of endangered species

1. Conservation of nongame and endangered species. The commissioner may establish such programs as are necessary to bring any endangered or threatened species to the point where it is no longer endangered or threatened, including:

- A. Acquisition of land or aquatic habitat or interests in land or aquatic habitat;
- B. Propagation;
- C. Live trapping;
- D. Transplantation. Prior to the transplantation, introduction or reintroduction of an endangered or threatened species in the State, the commissioner shall, in conjunction with the Atlantic Sea Run Salmon Commission, when appropriate, develop a recovery plan for that species, conduct a public hearing on that recovery plan pursuant to Title 5, Part 18 and submit that plan to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters. The introduction or reintroduction of that species must be conducted in accordance with the recovery plan developed under this paragraph and may not begin sooner than 90 days after all conditions of this paragraph have been met; and
- E. In the extraordinary case where population pressures within a given group ecosystem can not be otherwise relieved, regulated taking.

2. Habitat. For species designated as endangered or threatened under this subchapter the commissioner may by rule identify areas currently or historically providing physical or biological features essential to the conservation of the species and which may require special management considerations. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Protection guidelines. The commissioner may, by rule develop guidelines for the protection of species designated as endangered or threatened under this subchapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Annual report. The commissioner shall submit a written report by January 1st of each year to the joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters describing the status of all current and planned programs, activities and rules of the department pertaining to the conservation or management of endangered or threatened species. When appropriate, this report may be combined with any transplantation report required under subsection 1, paragraph D. The commissioner shall notify the Legislature by January 1st of each year that the report has been delivered.

12 § 12805. Cooperative agreements

The commissioner may enter into agreements with federal agencies, other states, political subdivisions of this State or private persons for the establishment and maintenance of programs for the conservation of endangered or threatened species and may receive all federal funds allocated for obligations to the State pursuant to these agreements.

12 § 12806. State and local cooperation

1. Review. A state agency or municipal government shall not permit, license, fund or carry out projects that will:

- A. Significantly alter the habitat identified under section 1204, subsection 2 of any species designated as threatened or endangered under this subchapter; or
- B. Violate protection guidelines set forth in section 12804, subsection 3.

The commissioner shall make information under section 12804 available to all other state agencies and municipal governments for the purposes of review.

2. Variance. Notwithstanding subsection 1, state agencies and municipal governments may grant a variance from this section provided that:

- A. The commissioner certifies that the proposed action would not pose a significant risk to any population of endangered or threatened species within the State; and
- B. A public hearing is held on the proposed action.

3. Pending applications. Notwithstanding Title 1, section 302, applications pending at the time of adoption of habitats and guidelines under section 12804, subsections 2 and 3 are governed by this section.

12 § 12807. Introduction of wolves to State; approval

A person may not release a wolf in the State for the purpose of reintroducing that species into the State without the prior approval of both Houses of the Legislature and the commissioner.

A person who violates this section commits a Class E crime.

12 § 12808. Misuse of endangered or threatened species

For the purposes of this section, "to take," "take" and "taking" mean the act or omission that results in the death of any endangered or threatened species.

1. Prohibited acts regarding endangered or threatened species; negligence. Except as provided in subsections 2 and 3, a person may not negligently:

- A. Import into the State or export out of the State any endangered or threatened species. A person who violates this paragraph commits a Class E crime;
- B. Hunt, take, trap or possess any endangered or threatened species within the State. A person who violates this paragraph commits a Class E crime;
- C. Possess, process, sell, offer for sale, deliver, carry, transport or ship, by any means whatsoever, any endangered or threatened species or any part of an endangered or threatened species. A person who violates this paragraph commits a Class E crime; or
- D. Feed, set bait for or harass any endangered or threatened species. A law enforcement officer, as defined in Title 25, section 2801-A, subsection 5, must issue a warning to a person who violates this paragraph for the first time. A person who violates this paragraph after having previously been given a warning under this paragraph commits a Class E crime.

1-A. Prohibited acts regarding endangered or threatened species; intentional. Except as provided in subsections 2 and 3, a person may not intentionally:

- A. Import into the State or export out of the State any endangered or threatened species. A person who violates this paragraph commits a Class D crime;

B. Hunt, take, trap or possess any endangered or threatened species within the State. A person who violates this paragraph commits a Class D crime;

C. Possess, process, sell, offer for sale, deliver, carry, transport or ship, by any means whatsoever, any endangered or threatened species. A person who violates this paragraph commits a Class D crime; or

D. Feed, set bait for or harass any endangered or threatened species. A law enforcement officer, as defined in Title 25, section 2801-A, subsection 5, must issue a warning to a person who violates this paragraph for the first time. A person who violates this paragraph after having previously been given a warning under this paragraph commits a Class D crime.

2. Exceptions for certain purposes. Notwithstanding subsections 1 and 1-A or section 10650 as it applies to rules adopted in accordance with this subchapter, the commissioner may:

A. Under such terms and conditions as the commissioner may prescribe, permit any act prohibited by this section or by rule for educational or scientific purposes or to enhance the propagation or survival of an endangered or threatened species; and

B. Under such terms and conditions as the commissioner may prescribe, permit any endangered or threatened species that enters the State and is being transported to a point outside the State to be so entered and transported without restriction in accordance with the terms of any federal or state permit.

3. Exceptions; incidental take plan. Notwithstanding subsection 1, the commissioner may:

A. Permit the taking of any endangered species or threatened species if:

(1) Such taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity;

(2) The taking will not impair the recovery of any endangered species or threatened species; and

(3) The person develops and implements an incidental take plan approved by the commissioner to take an endangered species or threatened species pursuant to paragraph B; and

B. Allow a plan that minimizes the incidental taking of an endangered species or threatened species that specifies the following:

(1) A description of the specific activities sought to be authorized by the incidental take permit and an analysis of potential alternatives;

(2) The individual and cumulative effects that may reasonably be anticipated to result from the proposed actions covered by the plan;

(3) The recovery measures the applicant will implement to prevent, minimize and mitigate the individual and cumulative effects and any provisions that are necessary to prevent, minimize and mitigate circumstances that are likely to impair the recovery of any endangered or threatened species covered by the plan;

- (4) The procedures for monitoring the effectiveness of the recovery measures in the plan;
- (5) The anticipated costs of implementing the plan and the availability of necessary funding for the applicant to implement the plan; and
- (6) Other modifications to the plan or other additional measures, if any, that the department may require and such other matters as the department determines to be necessary for the recovery of species consistent with this section.

The department shall seek input from knowledgeable individuals or groups on each incidental take plan for endangered or threatened species.

If any person fails to abide by the terms of any permit authorizing the incidental taking of an endangered or threatened species, the permit must be immediately suspended or revoked.

12 § 12809. Judicial enforcement

1. General. In the event of a violation of this subchapter, any rule adopted pursuant to this subchapter or any license or permit granted under this subchapter, the Attorney General may institute injunctive proceedings to enjoin any further violation, a civil or criminal action, or any appropriate combination of those proceedings without recourse to any other provision of law administered by the department.

2. Restoration. The court may order restoration of any area, affected by any activity found to be in violation of this subchapter, any rule adopted pursuant to this subchapter or any license or permit granted under this subchapter, to its condition prior to the violation or as near to that condition as possible. When the court finds that the violation was willful, the court shall order restoration under this subchapter, unless the restoration would result in:

- A. A threat to public health and safety;
- B. Environmental damage; or
- C. A substantial injustice.

8.01 Agency Jurisdiction

- A. The Commissioner has the authority to recommend to the Legislature the designation of any species of fish or wildlife found in the State (12 MRSA §7751) as endangered [12 MRSA §7001(7)] or threatened [12 MRSA §7001 (36) in accordance with the provisions of the Maine Endangered Species Act (12 MRSA §7753). The Legislature has sole authority to designate a species as endangered or threatened.
- B. When IF&W has overlapping jurisdiction with another state agency for a species (i.e. the Atlantic Salmon Authority and Atlantic salmon or the Department of Marine Resources and marine mammals, marine turtles, marine fish, marine invertebrates, and anadromous and catadromous species other than Atlantic salmon when in tidal waters), or another state agency has primary responsibility for a species (i.e. marine fish), IF&W will not recommend that species as threatened or endangered until the agency with overlapping or primary jurisdiction has reviewed the listing request.

8.02 Designation of Endangered and Threatened Species

- A. In determining whether a species meets one or more of the standards for designating a species as endangered or threatened as listed in 12 M.R.S.A. §7753(1), qualifications for consideration for listing, population guidelines for risk of extinction, and other factors will be considered. For the purposes of this chapter, "species" will mean "species" or "subspecies" and "populations" will mean all individuals of the species, statewide.
 - 1. Qualifications for Consideration for Listing

A species may only be recommended for listing as a state endangered or threatened species if it meets all of the following qualifications:

 - a. it is a species of mammal, bird, fish, amphibian, reptile, or invertebrate wild by nature as distinguished from domestic species;
 - b. it is an indigenous species to Maine, meaning it is not an exotic deliberately or accidentally introduced into Maine, the United States, or North America;
 - c. it is a species that spends some portion of its annual cycle in Maine, including breeding, migration, or wintering, but is not a vagrant or accidental visitor;
 - d. it is a species that has not expanded into Maine within the past 50 years as part of a general range expansion, unless it historically occurred in Maine or is threatened or declining throughout a significant portion of its total range;
 - e. It is a species that has not been reintroduced into Maine as part of an experimental wildlife management program, unless listing is part of the reintroduction plan; and
 - f. it is taxonomically classified no finer than a subspecies, unless federally Endangered or Threatened.

2. Population Guidelines for Risk of Extinction

The following population characteristics, when available, will be considered by the Commissioner when recommending whether a species meets the definition of Endangered or Threatened as provided in 12 M.R.S.A. §7001 (7 and 36);

- a. population viability,
- b. population size,
- c. population trend,
- d. population distribution,
- e. population fragmentation, and
- f. endemism, meaning the species only occurs in Maine.

3. Other Factors

In addition to population guidelines (2) above, other factors, including range or habitat loss, disease, predation, over-utilization, inadequacy of regulations, and other natural or human-related factors as measured through observation, inference, or projection, will be considered when determining whether to recommend a species for listing as Endangered or Threatened as provided in 12 M.R.S.A. §7001 (7 and 36).

B. Review of List

1. At least every 5 years, the Department shall initiate a review of the designation of species as Endangered or Threatened to determine if any species should be recommended to be added to, deleted from, or changed between the lists.
2. Requests to add, change, or remove species on the lists may be submitted to the Commissioner for review and recommendation at any time.

C. Prior to recommending an addition, deletion or other change to the endangered and threatened species list, the Commissioner shall provide for public notice and public hearings on the proposed recommendation in accordance with the provisions of Title 5, chapter 375, subchapter II.

8.03 Federally Listed Species (*Repealed*)

8.04 The following species have been designated by the Legislature to be endangered or threatened species within the State of Maine:

Common Name	Scientific Name	Status	Distribution
Least Tern	<i>Sterna albifrons</i>	Endangered	Statewide
Golden Eagle	<i>Aquila chrysaetos</i>	Endangered	Statewide
Piping Plover	<i>Charadrius Melodus</i>	Endangered	Statewide
Sedge Wren	<i>Cistothorus platensis</i>	Endangered	Statewide
Grasshopper sparrows	<i>Ammodramus avannarum</i>	Endangered	Statewide
Box Turtle	<i>Terrapene carolina</i>	Endangered	Statewide
Black Racer	<i>Coluber constrictor</i>	Endangered	Statewide
Roseate Tern	<i>Sterna dougallii</i>	Threatened	Statewide
Northern Bog Lemming	<i>Synaptomys borealis</i>	Threatened	Statewide

Loggerhead Turtle	Caretta caretta	Threatened	Statewide
Blanding's Turtle	Emydoidea Blandingii	Threatened	Statewide
Spotted Turtle	Clemmys guttata	Threatened	Statewide
Bald Eagle	Haliaeetus leucocephalus	Threatened	Statewide

8.05 Essential Habitat for Species Designated as Endangered or Threatened.

Maps identifying essential habitat entitled "Essential Habitat for Endangered and Threatened Species" will be submitted upon adoption.

The following areas, identified as currently or historically providing physical or biological features essential to the conservation of an endangered or threatened species and requiring special management considerations, and the management guidelines for the protection of these areas are adopted in accordance with the provisions of Title 12, Sections 7754. (2, 3,) and 7755-A (1,2,3,). The Commissioner has identified and mapped such habitats as depicted on the maps entitled "Essential Habitat For Endangered and Threatened Species," which incorporated herein.

A. Bald Eagle Nest Site

1. Purpose

To provide special protection to maintain breeding habitat and to prevent disturbance which may cause nesting failure of bald eagles. Protection is focused on the nest site.

2. Definitions

When used in this section, the following words and terms shall have the following meaning:

- a. Nesting area. "Nesting area" means a locality containing one or more nest sites and that has been used by a pair of nesting bald eagles.
- b. Occupied. "Occupied" means the presence of one or a pair of adult eagles, eagle eggs, or eagle chicks any time between March 1 and July 15.
- c. Project. "Project" means a planned undertaking, newly initiated or reinitiated.

* 2. Description

A bald eagle nesting area is a locality containing one or more nest sites used by breeding pair of bald eagles. A nesting area is occupied if one or a pair of adult eagles is present any time between March 1 and July 15. Protection is focused on the nest site.

** (APA Office Note: Bolded language above was filed with amendment of 12-22-89 (89-578), however, it was not included in the amendment of 3-19-93 (93-69) and was not included in 94-118. If it no longer in effect, it should be repealed in accordance with the A.P.A.)*

3. Designation Criteria

Bald eagle nest sites identified and mapped by the Commissioner of Inland Fisheries and Wildlife as essential habitat must be within a nesting area occupied in at least one of the three most recent years and have either a nest that has existed for two consecutive years; or the only existing nest in that nesting area.

Bald eagle nest sites designated as essential habitat will be deleted as follows:

- a. All nest sites in the nesting area will be deleted if a nesting area has not been occupied, as defined, at any time during the most recent five years.
- b. An individual nest site within an active nesting area will be deleted if a nest structure has not existed at any time during the most recent five years or the Commissioner determines that the site is no longer suitable nesting habitat.

4. Protection Guidelines

a. Projects Prohibited Without the Commissioner's Approval

Any project requiring a permit or license from, or to be funded or carried out by, a state agency or municipal government partly or wholly within a bald eagle nest site designated as essential habitat shall not be permitted, licensed, funded or carried out unless the Commissioner determines that the activity will not significantly alter or unreasonably harm the essential nesting habitat. Projects that may be affected include, but are not limited to: Subdivision of land or buildings, construction, installation, expansion, alteration or repair of permanent structures; agricultural management; mineral exploration and extraction; forest management; road projects and construction; shoreland alteration; utility construction; water crossing; water impoundment; aquaculture; conversion of seasonal dwelling; installation of subsurface wastewater disposal system; and issuance of an exemption of the minimum lot size requirement.

b. Exemptions

The following activities are exempted from the requirements of this paragraph.

- 1) Projects limited to repairs, maintenance and alterations to the interior of an existing structure.
- 2) Emergency repairs to existing structures and utilities which due to unforeseen circumstances require immediate action.
- 3) Emergency activities which due to unforeseen circumstances require immediate action for public health or safety.
- 4) Licenses and permits to operate or occupy a completed project.
- 5) Projects that address the protection of the essential habitat and the endangered and threatened species and are conducted as part of a Department Wildlife Management Area Plan or Species

Management Plan, or a Land Use Regulation Commission Resource Protection Plan (P-RP) to which the Department is a party, provided that the parties of the agreement perform according to its terms.

5. Significant Alteration of Habitat

In determining whether a project significantly alters or unreasonably harms essential nesting habitat, the following factors will be considered:

- a. Magnitude and time of year of noise and human activity generated by the project.
- b. Physical alteration to the landscape.
- c. Destruction of or alteration to key habitat components such as perch trees, roost trees, and foraging areas.
- d. Reduction in the seclusion of the nest site and adjacent shoreland area.
- e. Demonstrated tolerance of the particular eagles to human activity and disturbance.
- f. Reduction in the future suitability of the nest site to bald eagles.

B. Roseate Tern Nesting Area

1. Purpose

To provide special protection to maintain breeding habitat and to prevent disturbance which may cause nesting failure of roseate terns. Protection is focused on the nesting area.

2. Definitions

- a. Nesting area. "Nesting area" means a locality encompassing an island or portion of an island used by at least one pair of nesting roseate terns.
- b. Nesting. "Nesting" means the presence of one or more nests, eggs, chicks, or pairs of territorial adult terns between May 15 and August 15.
- c. Project. "Project" means a planned undertaking, newly initiated or reinitiated.

3. Designation Criteria

Roseate tern nesting areas identified and mapped by the Commissioner of Inland Fisheries and Wildlife as Essential Habitat must:

- a. Have a record of at least one pair of nesting roseate terns since 1930,
- b. Have suitable habitat as indicated by the presence of nesting common, arctic, or roseate terns in at least any 3 years since 1976, and
- c. Be considered essential to the achievement of the Department's management goals and objectives for roseate terns.

Roseate tern nesting areas designated as Essential Habitat will be deleted if:

- a. The nesting area has not been occupied by any nesting pairs of common terns, arctic terns, or roseate terns during the most recent 10 years, and the lack of occupancy is not related to predation or competition from other species, or to any human-related activity, or
- b. The nesting area is no longer considered essential to the achievement of the Department's management goals and objectives for roseate terns.

4. Protection Guidelines

a. Projects Prohibited Without the Commissioner's Approval

Any project requiring a permit or license from, or to be funded or carried out by, a state agency or municipal government partly or wholly within a bald eagle nest side designated as essential habitat shall not be permitted, licensed, funded, or carried out unless the Commissioner determines that the activity will not significantly alter or unreasonably harm the Essential habitat. Projects that may be affected include, but are not limited to: Subdivision of land or buildings, construction, installation, expansion, alteration or repair of permanent structures; agricultural management; mineral exploration and extraction; forest management; road projects and construction; shoreland alteration, utility construction; water crossing; water impoundment; dredging; aquaculture; conversion of seasonal dwelling; installation of subsurface wastewater disposal system; and issuance of an exemption of the minimum lot size requirement.

b. Exemptions

The following activities are exempted from the requirements of this paragraph.

- (1) Projects limited to repairs, maintenance and alterations to the interior of an existing structure.
- (2) Emergency repairs to existing structures and utilities which due to unforeseen circumstances require immediate action.
- (3) Emergency activities which due to unforeseen circumstances require immediate action for public health or safety.
- (4) Licenses and permits to operate or occupy a completed project.
- (5) Projects that address the protection of the essential habitat and the endangered and threatened species and are conducted as part of a Department Wildlife Management Area Plan or Species Management Plan, or a Land Use Regulation Commission Resource Protection Plan (P-RP) to which the Department is a party, provided that the parties of the agreement perform according to its terms.

5. Significant Alteration of Habitat

In determining whether a project significantly alters or unreasonably harms essential nesting habitat, the following factors will be considered:

- a. Magnitude and time of year of noise and human activity generated by the project.
- b. Physical alteration to the landscape of the uplands, waters, and submerged lands.
- c. Destruction of or alteration to key habitat components such as island vegetation, nesting and roosting substrate, and foraging areas.
- d. Increase in disturbance by humans, and in predation or competition by other species.
- e. Demonstrated tolerance of terns at the site to human activity and disturbance.
- f. Reduction in the future suitability of the nesting area to nesting roseate terns.

C. Piping Plover and Least Tern Nesting, Feeding, and Brood-Rearing Areas

1. Purpose

The purpose of Essential Habitat designation for Piping Plovers and Least Terns is to: 1) provide special protection to maintain nesting, feeding, and brood-rearing habitats essential to the conservation of these species; and 2) minimize human-related disturbance that can cause nesting failure of these species. Protection is focused on the coastal wetlands and coastal sand dune systems used by nesting Piping Plovers or Least Terns.

This rule is not intended to, and shall not be interpreted to: 1) preclude rebuilding of existing structures in accordance with implementation of the coastal sand dune regulations (38 M.R.S.A., Sec. 480-A (Q) and Chapter 355 of Department of Environmental Protection Rules), nor 2) preclude recreational uses in practice at the time an area was designated as Essential Habitat and that are otherwise allowed by law.

2. Definitions

When used in this section, the following words and terms shall have the following meaning:

- a. Nesting. "Nesting" means the presence of one or more nests, eggs or chicks of Piping Plovers or Least Terns.
- b. Nesting, feeding, and brood-rearing area. "Nesting, feeding, and brood-rearing area" means a locality encompassing portions of coastal wetlands and coastal sand dune systems (including subtidal, intertidal and beach and associated salt marshes and wetlands) used by at least one pair of nesting Piping Plovers or Least Terns.
- c. Project. "Project" means a planned undertaking, newly initiated or reinitiated.

3. Designation Criteria

Piping Plover and Least Tern nesting, feeding, and brood-rearing areas identified and mapped by the Commissioner of Inland Fisheries and Wildlife (IF&W) as Essential Habitat must:

- a. Have a record of nesting by at least one pair of Piping Plovers or Least Terns since 1986, and
- b. Be considered essential to the achievement of the Department's management goals and objectives for Piping Plovers or Least Terns.

Piping Plover and Least Tern nesting, feeding, and brood-rearing areas designated as Essential Habitat will be deleted if:

- a. The area has not been occupied by any nesting pairs of Piping Plovers or Least Terns during the most recent 10 years and the lack of occupancy is not related to predation or competition from other species, or to any human-related activity; or
- b. The area is no longer considered essential to the achievement of the Department's management goals and objectives for Piping Plovers or Least Terns.

4. Interpretation of Essential Habitat Area Boundaries

The following guidelines shall be used to interpret mapped Essential Habitat boundaries:

- a. In shaded areas, boundary lines are delineated in greater detail on composite aerial photographs (see "Boundary Line Detail Photos For Piping Plover and Least Tern Essential Habitat", prepared in November, 1994). Copies of these photographs are available for viewing at town offices in affected municipalities; Maine Department of Inland Fisheries and Wildlife offices in Gray, Augusta, and Bangor; and Maine Department of Environmental Protection offices in Portland and Augusta, or they may be purchased from: Essential Habitat Maps, Wildlife Assessment Section, 650 State Street, Bangor, Maine 04401-5654.

Outside of shaded areas, the lines on the maps indicate the boundaries. Where a line is solid, the line on the map determines the boundary, and the inside of the line is the edge of the boundary. Where a line is dashed, the boundary is determined by the edge of the coastal wetlands as defined by 38 M.R.S.A., Sect. 480-B. Cross-hatched areas are not part of the Essential Habitat.

- b. Where a boundary line follows a seawall or similar protective structure, only the beach area on the seaward side is intended to be included within the Essential Habitat: neither the seawall itself nor the property behind it are part of the Essential Habitat.

5. Protection Guidelines

a. Projects Prohibited Without the Commissioner's Approval

Any project requiring a permit or license from, or to be funded or carried out by, a state agency or municipal government partly or wholly within a Piping Plover and Least Tern nesting, feeding, and brood-rearing area designated as Essential Habitat shall not be permitted, licensed, funded or carried out unless the Commissioner determines that the project will not significantly alter the Essential Habitat.

Examples of projects that may be affected include, but are not limited to: subdivision of land or buildings; construction, installation, expansion, alteration or repair of permanent structures; mineral exploration and extraction; road projects and construction; dredging; bulldozing; removing or displacing soil, sand, vegetation, or other materials; draining or otherwise dewatering; filling, including adding sand or other material to a coastal sand dune; beach nourishment projects; dune restoration projects; utility construction; water crossing; water impoundment; aquaculture; installing of subsurface wastewater disposal system; and issuance of an exemption to the minimum lot size requirement.

Projects located wholly outside an area designated as Essential Habitat, regardless of whether some other portion of the lot or parcel of land is within the Essential Habitat, are not affected by this rule.

Licensed activities which are not considered projects and therefore is not affected by this rule include, but are not limited to: recreational hunting and fishing, shellfish harvesting, sulky driving, dog ownership, and motor vehicle and boat operation.

b. Exemptions

Within areas designated as Essential Habitat, the following projects are exempted from the requirements of this paragraph:

- (1) Emergency repairs to existing utilities and structures, including roads and seawalls that, due to unforeseen circumstances, require immediate action and do not require a coastal sand dune permit under 38 M.R.S.A., Section 480-A, §Q.
- (2) Emergency activities that, due to unforeseen circumstances, require immediate action for public health or safety.
- (3) Licenses and permits to operate or occupy a completed project.
- (4) Projects limited to repairs, maintenance, and alterations to the interior of an existing structure.
- (5) Projects that address the protection of the Essential Habitat and the Endangered or Threatened Species and are conducted as part of a Department Management Area Plan or Species Management Plan, or a Land Use Regulation Commission Resource Protection Plan (P-RP) to which the Department is a

party, provided that the parties of the agreement perform according to its terms.

- (6) Municipal licenses or permits for a project for which the Department, through another permitting process, has already found no significant alteration of the habitat or violation of protection guidelines for the essential habitat as currently mapped.

c. Review Process

For projects located partly or wholly within Essential Habitat as defined by 12 M.R.S.A. §7754 and this chapter, it is the responsibility of the state agency or municipality considering the permit or license application, or funding or carrying out the project, to obtain the Department's review. Forms entitled Request for Project Evaluation will be provided by the Department. Upon receiving a Request for Project Evaluation, the Department will provide an evaluation of whether the project would significantly alter the essential habitat or violate the Department protection guidelines as set forth in 12 M.R.S.A. §7755-A(1). If the proposed project will significantly alter Essential Habitat or violate the protection guidelines, and if a variance is sought, the Commissioner will determine whether a certification of no significant risk to the population, as described in 12 M.R.S.A. §7755-A(2) can be issued.

6. Significant Alteration of Habitat

In determining whether a project significantly alters essential nesting, feeding, and brood-rearing habitat for Piping Plovers and Least Terns, the following factors will be considered:

- a. Magnitude and time of year of noise and human activity generated by the project;
- b. Within the area designated as Essential Habitat, destruction, alteration, or degradation of a portion of a coastal wetlands or coastal sand dune system (including subtidal, intertidal and beach and associated salt marshes and wetlands) which will adversely affect the Essential Habitat;
- c. Increase in disturbance by humans and their pets, or increased predation (or attraction of predators) or competition from other species; and
- d. Reduction in the future suitability of the nesting, feeding, and brood-rearing habitat for Piping Plovers and Least Terns.

STATUTORY AUTHORITY:

EFFECTIVE DATE:

January 4, 1984 - Sec. 1

AMENDED:

January 17, 1987 - Sec. 1

March 1, 1990 - Sec. 3

March 11, 1991 - Maps only

March 1, 1992 - Maps only

March 24, 1993

March 29, 1994 - Add new Sec. 1, 2 & renumber previous sec. 1, 2 & 3

May 23, 1994 - Sec. 3, 4 & 5

March 28, 1995 - Maps only

May 31, 1995 - Sec. 5 (C)

February 23, 1998 - Sec. 5 - added first sentence; 5(A)(3); converted to M.S. Word 2.0.

October 29, 1998 - amended maps for existing Essential Habitat Site #PPLT 04 (Pine Point and Western Beach, Scarborough and Old Orchard Beach); added PPLT #11 (Fortunes Rocks Beach, Biddeford) and PPLT #12 (Scarborough Beach, Scarborough); added "List of Essential Habitat Maps and Their Current Effective Dates" as Appendix I. Maps are available from the Department.

October 1, 1999 - replaced Appendix I, added Appendix II.